

Appln. No. 10/678,871  
Amendment filed October 3, 2005  
Response to Office Action mailed April 1, 2005

### REMARKS

#### I. Summary of Telephonic Interview

Applicant's representative thanks the Examiner for the time given by the Examiner in a telephonic interview dated September 12, 2005. During the interview it was determined that due to no error on the part of the applicant, the Examiner did not receive the Amendment submitted on March 7, 2005 which included additional claims. The Examiner offered the applicant the opportunity to file a Request for Reconsideration with the additional claims so that the Examiner could examine all of the claims and issue a Non-Final-Office Action. The substance of the interview is also reflected in the Interview Summary, which confirms the "Office will examine all the claims and issue a Non Final Office Action."

#### II. Status of the Claims

Claims 1-17 and 78-81 are previously pending in the current application, each of which stands rejected by the outstanding Office Action. By the instant amendment, claim 1 is amended, and new claims 82-86 are added. No new matter has been added by these amendments. Favorable consideration of the application is respectfully requested in light of the foregoing amendments and the following remarks.

#### III. Rejections under 35 U.S.C. § 112

Claim 1 stands rejected under 35 U.S.C. § 112, ¶ 2 for failing to comply with the definiteness requirement. However, the Office Action simply recited the method taught in the present specification without setting forth any deficiency in the claim. Indeed, the Examiner's characterization of the teaching generally identified the same three steps recited in the claim.

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Accordingly, Applicant respectfully submits that the claim, as presented, is definite and respectfully requests that the rejection be withdrawn.

**IV. Rejections under 35 U.S.C. § 101**

Claims 1-17 and 78-81 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In response, by the present amendment, Applicants have amended independent claim 1 to recite use of a computer, such as a personal computer, electronic calculator or other processor. Support for this amendment can be found, *inter alia*, at paragraph 22. Accordingly, Applicant respectfully submits that the independent claim and hence all claims that depend therefrom are directed to the technological arts as required under 35 U.S.C. § 101, and request that the rejection be withdrawn.

**V. Rejections under 35 U.S.C. § 103(a)**

Claims 1-17 and 78-81 stand rejected under 35 U.S.C. § 103 as being obvious in view of ZipRealty.com (ZipRealty) in light of U.S. Patent No. 6,578,011 ("Forward"). As described in greater detail below, applicants respectfully submit that the present invention is not obviousness in light of ZipRealty and/or Forward, either in combination or standing alone, which fail to teach or suggest the claimed invention.

In general, Forward describes a buyer-seller matching system that uses incentives to verify commissions from matching a buyer with a seller. In general, the incentives made known and used in Forward are of two types, incentives for a buyer and incentives for a seller. Similarly, ZipRealty discloses a system where both a seller and a buyer can each be given monetary incentive in connection with a real estate sale by receiving either a discount to the seller or a rebate to the buyer that is intended to coerce the respective buyer or seller to use the

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system. The present invention, in stark contrast, does not concern itself with the distribution of consideration or a reward after a sale has taken place, as in the cited references, but rather with allowing a real estate agent to obtain a real estate listing by providing consideration to the potential seller before any sale takes place. In this regard claim 1 recites "providing consideration to the seller." In the context of the present invention, "consideration" means "payment given in exchange for a service rendered; recompense: agreed to do it for a small consideration . . . something promised, given, or done that has the effect of making an agreement a legally enforceable contract" (The American Heritage® Dictionary of the English Language, Fourth Edition, 2000) or "the inducement to a contract or other legal transaction" (Merriam-Webster's Online Dictionary, 10th Edition). Moreover, the claim recites that it is the real estate listing that is received "in return for providing the consideration to the seller," thereby confirming this definition of "consideration."

In the present invention, the consideration is given to the potential seller regardless of whether a sale does or does not take place. In the cited references, no consideration is given to the seller in return for the listing; instead, an incentive is given after the sale has taken place.

Furthermore, because the consideration is in return for the listing, not sale, there is no opportunity in the references for the broker to receive return consideration. There is no teaching or suggestion of such return consideration to the broker in the cited references because in such references, the broker does not provide consideration prior to the sale, as in the claimed invention.

Still further, the Office Action cites Forward, Col. 2, lines 22-26 as teaching an up-front payment. This is wrong. The cited portion of Forward describes "financial incentives for

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sellers to participate in a central directory system by offering to provide their content in exchange for a fee paid based on sales generated." This is not an up-front payment because the payment is based on sales generated—a fee after the sale--not before the sale when the listing is placed. (Col. 2, lines 38-45 confirm the incentive is based on a later sale ("in exchange for a fee based on the actual sale of the item.")) Moreover, this fee being discussed is paid to the listing agent, not the seller. The Office Action is simply comparing apples (fee to the listing agent in Forward) to oranges (considerations to the seller in the present invention.) Forward describes nothing more than the traditional real estate commission to the agent, not consideration to the seller. Accordingly, applicant respectfully submits that Forward fails to teach or suggest consideration in return for the listing, as recited in the claims.

Accordingly, applicant respectfully submits that claims 1-17 and 78-81 as amended are patentable over ZipRealty and Forward, both alone and in combination.

#### **VI. Dependent Claims**

Applicant respectfully submits that the claims depending from claim 1 are allowable for at least the reasons noted above and are further distinguishable from the cited references.

For example, claim 2 recites an upfront payment to seller, whereas the Office Action relies upon Forward's description of a "back-end" (i.e., after the sale) payment to the agent. (See above). Similarly, new claim 83 explicitly recites that providing consideration to the seller occurs "prior to the sale of the property and does not conditioned on sale of the property." Such consideration is neither taught nor suggested in the cited references.

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New claim 82 provides that the method of claim 1 further comprises offering a seller two different contractual arrangements, one in which the real estate agent obtains a listing and an ability to receive a first commission and a second arrangement wherein the real estate agent obtains the listing and an opportunity to receive a second commission. Notably, these two arrangements differ based upon the seller receiving consideration when it provides the listing. In this regard, the claim recites:

wherein the second commission is greater than the first commission by an amount,

wherein the seller receives the consideration for providing the listing in the second arrangement, the consideration not being included in the first arrangement; and

...wherein the return consideration includes the amount.

None of the cited references, either alone or in combination teaches or suggests presenting to a seller these two contractual arrangements explicitly set forth in the claims. Accordingly, applicant respectfully submits that claim 82 is neither anticipated nor rendered obvious by the cited references and is in condition for allowance.

Claim 84, which depends from claim 1, further recites the step of "allowing the seller to retain at least a portion of the consideration if the sale condition is not met." As such, the claim requires consideration to the seller in return for the listing and, where a sale condition (e.g., receipt of a bona fide offer or sale contract) or sale contract is met, having the real estate agent receive return consideration from the seller and, where the sale condition is not met, allowing the seller to retain at least a portion of the consideration previously paid to it. Applicant respectfully submits that none of the cited references teaches or suggests, either alone or in combination, a sale condition on which is conditioned either receiving return consideration from

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the seller or allowing the seller to retain consideration. Accordingly, applicant submits that claim 84 is also distinguishable over the art of record and is in condition for allowance.

Claim 85, which is also dependent from claim 1, further characterizes the invention as presenting two contractual arrangements to the seller. More specifically, pursuant to the first arrangement, the real estate agent is entitled to a first commission from the seller if a first sale condition is met, and pursuant to the second arrangement, the real estate agent is able to obtain a second commission if a second sale commission is met, "wherein the seller receives the consideration in return for the listing, the consideration is not being included in the first arrangement, and wherein the seller keeps at least a portion of the consideration if the second sale condition is not met." As such, the seller is receiving consideration "in return for the listing" and is able "to retain at least a portion of the consideration if the sale condition is not met." Applicant respectfully submits that none of the cited references, either alone or in combination, teaches or suggests providing the seller consideration in return for a real estate listing and conditioning whether a seller keeps a portion of the consideration on a sale condition. Accordingly, applicant respectfully submits that claim 85 is also allowable.

#### **VII. New Claim 86**

Applicant respectfully submits that independent claim 86 is also in condition for allowance. In general, claim 86 mirrors dependent claim 2, providing that the consideration to the seller is "up-front" and explicitly providing that the real estate listing received from the seller is "in return for the up-front consideration." Furthermore, the method is defined by the real estate agent "receiving a refund of at least a portion of the consideration from the seller if a sale condition is met". As acknowledged in the office action, such a sale condition includes, for

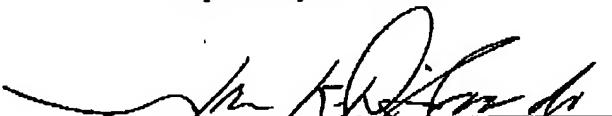
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example, receipt of a bonafide purchase offer for a contract for sale. Finally, the method of claim 84 recites that the seller is allowed "to retain at least a portion of the consideration if the sale condition is not met." None of the cited references teaches or suggests a seller receiving up-front consideration in return for a real estate listing and, if a sale condition is met, allowing an agent to receive a refund of at least a portion of the consideration from the seller, and, if a sale condition is not met, allowing the seller to retain at least a portion of the consideration.

**VIII. Conclusion**

Applicants thus believe that all claims pending in the present application are in condition for allowance. Accordingly, applicant respectfully requests reconsideration of the present application in view of the amendments and remarks provided herein. If any additional fees are due in connection with this Amendment, in this or a subsequent paper, authority is hereby given to charge such fees to Deposit Account No. 19-4709.

Respectfully submitted,



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